

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 179**

Introduced By: Lathrop, 12  
Read first time: January 9, 2007  
Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to require electronic  
2 recording of custodial interrogations as prescribed; to  
3 define terms; to provide for the suppression of certain  
4 evidence; to provide exceptions; and to address inaudible  
5 portions of recordings.

6 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Legislature finds that to electronically  
2 record admissions or statements is an effective way for the  
3 prosecution to meet its burden of demonstrating a free, knowing, and  
4 intelligent waiver of a person's right to remain silent, to refuse to  
5 answer questions, to have an attorney present during such  
6 questioning, and to have an attorney provided to such person if he or  
7 she cannot afford an attorney, as provided by the Constitution of the  
8 United States and the Constitution of Nebraska. Providing a precise  
9 record of the circumstances of a custodial interrogation and any  
10 waiver of constitutional rights will reduce speculation and claims  
11 that may arise as to the content of the custodial interrogation. Such  
12 a record of the context of admissions or statements aids law  
13 enforcement officers in analyzing and rejecting untruthful admissions  
14 or statements and will further aid the factfinder in determining  
15 whether an admission or statement was voluntarily made.

16           Sec. 2. For purposes of sections 1 to 7 of this act:

17           (1) Custodial interrogation has the meaning prescribed to  
18 it under the Fourth and Fifth Amendments to the Constitution of the  
19 United States and Article I, sections 3 and 7, of the Constitution of  
20 Nebraska, as interpreted by the United States Supreme Court and the  
21 Nebraska Supreme Court;

22           (2) Electronically record means to record using an audio  
23 recording device or a video recording device;

24           (3) Place of detention means a building under the control  
25 of a law enforcement agency, including, but not limited to, a police  
26 station, sheriff's office, troop headquarters, courthouse, county  
27 attorney's office, juvenile or adult correctional or holding

1 facility, community correctional center, or health care facility at  
2 which the person accused, suspected, or charged is detained pursuant  
3 to the authority of a law enforcement officer; and

4 (4) Reasonable excuse means circumstances in which:

5 (a) An admission or statement was made when it was not  
6 practicable to electronically record the admission or statement;

7 (b) Equipment to electronically record the interrogation  
8 could not be reasonably obtained;

9 (c) The person accused, suspected, or charged refused to  
10 have the interrogation electronically recorded; or

11 (d) The equipment used to electronically record the  
12 interrogation malfunctioned.

13 Sec. 3. All custodial interrogations at a place of  
14 detention, including custodial interrogations about rights described  
15 in section 1 of this act or the waiver of such rights, shall be  
16 electronically recorded.

17 Sec. 4. Except as otherwise provided in sections 5 and 6 of  
18 this act, if a law enforcement officer fails to comply with sections 1  
19 to 7 of this act, an admission or statement made in response to a  
20 custodial interrogation at a place of detention shall be suppressed  
21 at a criminal proceeding against such person.

22 Sec. 5. (1) Any admission or statement made during a  
23 custodial interrogation at a place of detention which is not  
24 electronically recorded is not admissible unless the prosecution  
25 proves, by a preponderance of the evidence, that there is a  
26 reasonable excuse for there not being an electronic recording.

27 (2) If a person testifies contrary to his or her admission

1 or statement made during a custodial interrogation at a place of  
2 detention which was not electronically recorded, such admission or  
3 statement may be used for the purpose of impeachment if it is shown  
4 that the admission or statement was voluntarily made.

5 (3) A ruling by a court suppressing an admission or  
6 statement pursuant to section 4 or 5 of this act does not prevent the  
7 use of any evidence derived from such admission or statement if the  
8 court determines that the evidence is otherwise admissible.

9 Sec. 6. Any admission or statement of a person made as a  
10 result of custodial interrogation is admissible against such person in  
11 a criminal proceeding in this state if:

12 (1) The admission or statement was obtained in another  
13 state and was obtained in compliance with the laws of that state; or

14 (2) The admission or statement was obtained by a federal  
15 law enforcement officer in this state or another state, was obtained  
16 in compliance with the laws of the United States, and was not taken  
17 by a federal law enforcement officer in an attempt to circumvent  
18 sections 1 to 7 of this act.

19 Sec. 7. The presence of inaudible portions of an electronic  
20 recording, which are not the result of deliberate conduct by a law  
21 enforcement officer to produce an inaudible result, standing alone,  
22 do not render an admission or statement inadmissible.